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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,918	06/13/2001	Gordon W. Glazner	84894-602	2276

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ADE & COMPANY  
1700-360 MAIN STREET  
WINNIPEG, MB R3C3Z3  
CANADA

EXAMINER

MAYES, LAURIE A

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/878,918

Applicant(s)

GLAZNER, GORDON W.

Examiner

Laurie Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5 and 25-31, drawn to a pharmaceutical composition comprising a pentacyclo-polycyclic ring and a kit comprising said composition, classified in class 514, subclass 229.5.
- II. Claims 6-24, drawn to a method of treating disease comprising administering an IP3 receptor-mediated calcium channel modulator, classified in class 514, subclass 2.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the products in Group I may be used in a materially different process than in treating disease. For example, 2-aminoethoxydiphenyl borate is known to cause a dissociation between membrane electrical and mechanical activity in urinary bladder smooth muscle.

Claims 1 and 25 link(s) inventions directed to a Xestospongine C; Xestospongine A; Araguspongine B; Xestospongine D; 2 aminoethoxydiphenyl borate and demethylestospongine B. These compounds have different structures and different functions as Xestospongine A is

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naturally occurring in Pacific basin sponges and has vasodilatory functions while 2-aminoethoxydiphenyl borate is known to play a role in smooth muscle mechanical activity. As each of these compounds is distinct, linking claims 1 and 25 are not allowable. The restriction requirement are set forth above as to inventions I, is conditioned on the nonallowance of the linking claim(s), the different methods and diseases treated is conditioned on the basis of non-allowance of linking claims. If the applicant elects Group I, the applicant must elect a specific IP3 receptor mediated calcium channel blocker. If Group II is elected, the applicant must elect a specific IP3 receptor mediator calcium channel blocker and a specific disease/ condition to be treated.

Claims 14 and 23 link(s) inventions directed to a method of treating HIV (claims 6-13, 19 and 20); inflammatory diseases (claim 15) which are (claim 16) where claim 15 also links the inventions recited in claim 16; pain; cardiovascular disease; uncontrolled growth (claim 21) which is cancer (claim 22) and skin diseases such as psoriasis (claim 24). Methods of treating the above-mentioned diseases are distinct and each disease is different and affects a different patient population, each disease requires a different amount of active agent and different treatment regimens with different expected outcomes for the treatment of each disease. As the methods of treating the various diseases are different inventions, linking claims 14 and 23 are not allowable. The restriction requirement are set forth above as to inventions I and II as well as in Group II, is conditioned on the nonallowance of the linking claim(s), the different methods and diseases treated is conditioned on the basis of non-allowance of linking claims. Further, the compositions of a PLC inhibitor and a G protein inhibitor, namely, pertussin toxin are different structures with different functions as pertussin toxin may also cause whooping cough.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and searches required for each, restriction for examination purposes as indicated is proper.

A telephone call was made to Michael R. Williams on June 30, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laurie Mayes whose telephone number is (703) 605-1208. The examiner can normally be reached on Monday through Friday from 9 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1123.



Laurie Mayes  
Patent Examiner  
Art Unit 1653  
June 30, 2003



CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1500